

Appeal from a decision by the Utah State Office, Bureau of Land Management, declaring the Sno-Ben #4 through #6 placer mining claims null and void ab initio. U MC 289732 through U MC 289734.

Reversed.

1. Courts -- Mining Claims: Lands Subject to -- Withdrawals and Reservations: Effect of -- Withdrawals and Reservations: Revocation and Restoration

Where a Federal district court issues a preliminary injunction which has the effect of reinstating the terms of a revoked reclamation withdrawal, which had precluded the location of mining claims, a mining claim located the day before the effective date of the preliminary injunction is not null and void ab initio, since on the date of location, the lands were open to the operation of the mining laws.

APPEARANCES: Hale C. Tognoni, Esq., Phoenix, Arizona, for appellants; David K. Grayson, Esq., Assistant Regional Solicitor, Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Harold L. Bennett and several others 1/ appeal from an April 24, 1987, decision by the Utah State Office, Bureau of Land Management (BLM), declaring the Sno-Ben #4 through #6 placer mining claims null and void ab initio. BLM stated that the lands were closed to mineral entry pursuant to an injunction ordered by the district court in National Wildlife Federation v. Burford (National Wildlife), 676 F. Supp. 280 (D.D.C. 1986), aff'd, 835 F.2d 305 (D.C. Cir. 1987).

1/ Leo Snow, Leta Snow, Patsy J. Bennett, Marjorie J. Souder, Vickey Batty, Francis E. Symons, and Fred Smith are listed as locators, along with Harold Bennett, on the notice of location for the Sno-Ben #4 claim. In addition to Harold Bennett, locators for Sno-Ben #5 are Leo Snow, Dennis A. Morris, Vickey Batty, Lawrance H. Bennett, Joyce M. Leatherwood, Leta Snow, and Patsy J. Bennett. The notice of location for the Sno-Ben #6 claim lists Leo Snow and Harold Bennett as locators.

On May 7, 1986, appellants filed notices of location with BLM for the three claims in question, listing February 17, 1986, as the date of location for each. The claims are located in secs. 5 and 7, T. 5 S., R. 24 E., and sec. 12, T. 5 S., R. 23 E., Salt Lake Meridian, Uintah County, Utah. Public Land Order No. 5850, effective February 20, 1981, had revoked reclamation withdrawals dating from the 1940's pertaining to these lands and restored them to the operation of the public land laws, including the mining laws. 46 FR 7348 (Jan. 23, 1981).

In their statement of reasons (SOR), appellants argue that according to the public land status records the claimed land remains open to mineral entry; BLM failed to notify appellants of the February 10, 1986, National Wildlife injunction until the decision of April 24, 1987; BLM's action declaring the claims null and void ab initio was premature due to a pending appeal in National Wildlife; environmental impact studies, one of the justifications for the National Wildlife injunction, are irrelevant to appellants' mining claims; the BLM declaration incorrectly states BLM's responsibilities concerning the lands in question; and the declaration amounts to an unconstitutional taking of private property. 2/

In its answer 3/ to the SOR, BLM argues it is required to comply with the court-ordered injunction, regardless of the status of the public land records; actual notice of the injunction is irrelevant; BLM must act in accordance with the injunction in existence rather than base its decision on speculation concerning an appeal; the fact that the original purpose for a withdrawal is no longer valid is irrelevant to the continued validity of the withdrawal; and BLM's decision does not constitute an unconstitutional taking of private property.

A brief history of the National Wildlife injunction is essential to analysis of this matter. On July 15, 1985, the National Wildlife Federation (NWF) filed suit in the District Court for the District of Columbia challenging the Department's procedures for terminating, revoking, or modifying withdrawals or classifications of public lands. The district court granted the preliminary injunction requested by NWF in a memorandum opinion dated December 4, 1985 (National Wildlife Federation v. Burford, 676 F. Supp. 271 (D.D.C. 1985)), 4/ but stayed it on December 19, 1985. National Wildlife Federation v. Burford, No. 85-2238 (D.D.C. Dec. 19, 1985) (order staying preliminary injunction of December 4, 1985). 5/

2/ Appellants also mention a May 14, 1987, letter informing them of certain reclamation actions required of them pursuant to 43 CFR Subpart 3809, due to the fact that their claims had been declared null and void ab initio. The record in this matter does not include information concerning the current status of that particular BLM action. However, as the conclusion of this Board, infra, is that appellants' claims are not null and void ab initio, any further action in compliance with the May 14, 1987, letter will not be required.

3/ BLM's answer was filed on Oct. 14, 1987, along with its request for permission to file a late answer. That request is granted.

4/ That preliminary injunction is published at 50 FR 51609 (Dec. 18, 1985). 5/ The order staying the preliminary injunction is published at 50 FR 52565 (Dec. 24, 1985).

Subsequently, by memorandum opinion dated February 10, 1986, the district court denied reconsideration of the injunction and modified the injunction to clarify that it only applied to the Federal defendants, not third parties, and that terminations of classifications and revocations of withdrawals which had taken place since January 1, 1981, were suspended, not voided. ^{6/} National Wildlife Federation v. Burford, 676 F. Supp. 280 (D.D.C. 1986), aff'd, 835 F.2d 305 (D.C. Cir. 1987). ^{7/}

In Chester C. Reddeman, 101 IBLA 33 (1988), this Board was asked to determine the impact of the National Wildlife preliminary injunction on three lode mining claims and a mill site claim located by Reddeman. In that case BLM terminated a classification on August 21, 1981, which had segregated certain lands from mineral entry, and on October 5, 1981, opened the land to all forms of appropriation under the public land laws, including locations under the mining laws. In Reddeman, we found the injunction suspended any termination of classification or revocation of withdrawal which occurred after January 1, 1981, and that it was intended to reinstate and had the effect of reinstating the terms of any such terminated classification or revoked withdrawal. Since Reddeman's claims were located in August and September 1986, months after the district court's injunction, we upheld the BLM decision declaring the claims null and void ab initio on the basis that at the time of his locations the land was not open to entry under the mining laws.

The initial question raised in this case is whether the injunction was in effect at the time appellants located the claims at issue. If it was not, appellants' claims are not null and void ab initio, and we need not address the issues raised by appellants.

[1] Effective February 20, 1981, the Department revoked certain reclamation withdrawals and restored the lands in question to operation of the mining laws. Thereafter, the district court issued its injunction, which, we stated in Reddeman, had the effect of reinstating the terms of terminated classifications or revoked withdrawals. Although the preliminary injunction was filed on February 10, 1986, it did not become effective on that date. ^{8/} The court stated: "[t]his preliminary injunction shall take effect upon publication in the Federal Register or on the fifth day after this order is filed, whichever day occurs sooner * * *." 51 FR 5810 (Feb. 18, 1986).

^{6/} The court's preliminary injunction is published at 51 FR 5809-10 (Feb. 18, 1986).

^{7/} Eventually, the district court dismissed the suit based on its conclusion that the plaintiffs had no standing. It also vacated the preliminary injunction and denied NWF's motion for a permanent injunction. National Wildlife Federation v. Burford, No. 85-2238 (D.D.C. Nov. 4, 1988), appeal docketed, No. 85-5397 (D.C. Cir. Nov. 14, 1988).

^{8/} As set forth above, the district court actually issued the preliminary injunction in December 1985; however, it stayed the effectiveness of the injunction pending its ruling on defendants' motion to amend, reconsider, and clarify the injunction. Thus, the injunction was not effective during the pendency of defendants' motion.

Rule 6(a) of the Federal Rules of Civil Procedure outlines the procedure to be followed in computing the effective date of the injunction. The injunction was filed on Monday, February 10, which, pursuant to Rule 6(a), is excluded from the computation; also excluded pursuant to the rule are Saturday and Sunday, February 15 and 16. Furthermore, Rule 6(a) requires the exclusion of Washington's Birthday, a legal holiday, which fell on February 17 in 1986. Consequently, both the fifth day after filing of the order, and the day the order was published in the Federal Register fell on February 18, 1986, which is the effective date of the injunction.

The question then is whether appellants located their claims prior to February 18, 1986. Pursuant to 43 CFR 3833.0-5(h), the date of location of a mining claim is determined by state law in the local jurisdiction in which the claim is situated. In Utah, the relevant date is that upon which the claimant marks the boundaries of the claim, having made a discovery of a valuable mineral deposit, and not the date upon which local recordation occurs. Larry Lahusen, 48 IBLA 43, 45 (1980). In this case, the location notices for appellants' claims list February 17, 1986, as the date of location and February 18, 1986, as the date those claims were recorded with the county recorder. ^{9/} Therefore, appellants' claims were located on February 17, 1986, the day before the effective date of the district court's preliminary injunction.

We find that the terms of the relevant withdrawals precluding mineral entry were not reinstated until after the claims in issue had been located. ^{10/} Thus, at the time appellants located these claims the lands were open to the operation of the mining laws and the injunction, which became effective the following day, did not cut off any rights appellants had established by their locations.

^{9/} This Board has held that the date of local recordation is relevant when the claimed land was withdrawn from the mining laws after the claimant failed to record locally by the deadline for local recordation. R. Gail Tibbetts, 43 IBLA 210, 224-26, 86 I.D. 538, 545-46 (1979), overruled on other grounds, Hugh B. Fate, 86 IBLA 215 (1985); H. B. Webb, 34 IBLA 362 (1978). However, this is not an issue herein as the subject claims were recorded in the county on Feb. 18, 1986, well before the deadline for such recordation in Utah, which is within 30 days after posting the location notice on the claim. See R. Pruitt, Jr., Digest of Mining Claim Laws, 132 (3rd ed. 1986).

^{10/} BLM argues in its answer that appellants' claims are still null and void ab initio, even though located prior to the effective date of the injunction, because "the court in essence ruled retroactively that terminations of withdrawals made since Jan. 1, 1981, were ineffective" (Answer at 4). We reject that argument as inconsistent with the position taken by BLM, and accepted by the Board, in Reddeman that only claims located after the effective date of the injunction were subject to it. See 101 IBLA at 36.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is reversed.

Bruce R. Harris
Administrative Judge

I concur:

Anita Vogt
Administrative Judge
Alternate Member